

UT 95-2

Tax Type: USE TAX

Issue: Medicines & Medical Appliance Exemption (Low Rate)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

-----  
Department of Revenue )  
State of Illinois )  
 )  
 v. )  
 ) Claim for Credit  
XXXXXX ) Mimi Brin  
 ) Administrative Law Judge  
-----

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX for Claimant, XXXXX

SYNOPSIS: The Claimant herein, XXXXX (hereinafter referred to as the "Claimant" or "XXXXX") filed a claim for credit (hereinafter referred to as the "Claim") with the Illinois Department of Revenue (hereinafter referred to as the "Department") on June 12, 1990 for \$15,950.00. The claim is for the Use Tax paid by the claimant in March, 1990, for a linear accelerator (hereinafter referred to as the "machine") it purchased in 1984. This amount does not include any interest or penalty which accrues as a result of the late payment.

The Department denied the claim and the claimant made a timely protest of the denial with a request for a hearing. The basis of XXXXX claim and protest is that this machine is exempt from Illinois Use Tax as a "medical appliance" pursuant to the statutory exemption found at 35 ILCS 105/3-10.

A hearing in this matter was held on September 21, 1994. Dr. XXXXX, president of XXXXX and a physician with a specialty in radiation oncology, testified on XXXXX behalf. Based upon the evidence adduced at that hearing, it is recommended that this matter be resolved in favor of the claimant.

FINDINGS OF FACT:

1. Dr. XXXXX is president of XXXXX, which is located in XXXXX, Illinois. Tr. p. 8; Cl. Ex. 1
2. Dr. XXXXX is a physician with a medical specialty in the treatment of the disease of cancer with radiation therapy. Tr. pp. 11, 19
3. Dr. XXXXX does not diagnose patients. Tr. p. 11
4. Cancer is treated basically by three main modalities: 1) surgery; 2) chemotherapy; and 3) radiation. Tr. p. 11
5. A linear accelerator is used to treat cancer by radiation. Tr. pp. 19-20
6. The disease of cancer is an abnormal condition of the human body and can locate in any part of the body, from the brain to the foot. Tr. p. 14
7. This disease causes the body part affected with it to dysfunction. Tr. pp. 15, 16
8. Treatment of the cancerous body part with the machine is done for the purpose of destroying the cancer so that the affected body part can function properly Tr. p. 15
9. The linear accelerator is not used to diagnose the patient's ailment. Tr. p. 16-17
10. The amount of energy emitted from the linear accelerator is hundreds of times greater than the energy emitted from equipment used for diagnostic purposes. Tr. pp. 19-20
11. The linear accelerator is only used to treat patients who have already been diagnosed with cancer. Tr. pp. 16, 17-18, 20
12. XXXXX purchased a linear accelerator in 1984. Tr. p. 12
13. The purchase price of the machine was \$319,000.00. Tr. p. 12
14. In March, 1990, XXXXX paid to the Department \$15,950.00 for Illinois Use Tax for the linear accelerator at issue. Cl. Ex. 5

15. On June 12, 1990, XXXXX filed a claim for credit with the Illinois Department of Revenue for the \$15,950.00 in Use Tax paid for the machine. Dept. Ex. 1; Cl. Ex. 1

16. XXXXX bore the burden of the Illinois Use Tax for this machine, in the amount of \$15,950.00. Cl. Ex. 5

17. The Department denied the claim. Dept. Ex. 1

CONCLUSIONS OF LAW: XXXXX seeks a refund of Use tax paid by it to the Department pursuant to its 1984 purchase of a linear accelerator. Claimant's position is that, although there is a tax on the privilege of using, in this State, tangible personal property, this equipment falls within a statutory exemption which read, at the time of the purchase and tax payment, in pertinent part:

However, with respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 0%.

Ill. Rev. Stat., 1985, ch. 120, par. 439.3 (now 35 ILCS 105/3-10, with the current rate of tax being 1%)

Although the controlling statute contains limitations as to specific medical apparatus which the legislature intended to exempt, it did not, nor does it now, define the term "medical appliance". However, at the time of the purchase, and at the time of tax payment, the Department had in effect a regulation which defines the term, and did so as follows:

(2) A medical appliance is an item which is intended by the maker to correct any functioning part of the body or which is used as a substitute for any functioning part of the body, such as artificial limbs, crutches, wheelchairs, stretchers, hearing aids, corrective eyeglasses, dental prostheses, and sterile cotton, bandages and band-aids. The term "medical appliance" also includes testing equipment used by an individual to test his or her own medical condition.

The linear accelerator at issue does specifically and directly correct abnormal conditions of human body parts. The abnormalities cause the body organ to dysfunction, and following successful use of the machine, the organ is returned to normal operation. This function, then, qualifies the machine as a "medical appliance" under the Department's regulatory definition applicable at all pertinent times.

Therefore, for the reasons stated above, it is my recommendation that the Department grant XXXXX Claim for Credit.

Mimi Brin  
Administrative Law Judge

- 
1. The key to the conclusion reached in this case lies in the fact that the Department's regulation prior to January 13, 1992 was phrased in the disjunctive, thereby creating the inescapable result that "medical appliances" in the opinion of the Department was an either/or proposition. That is, a medical appliance was one which corrected a functioning (sic) part of the body or one which substituted for such. It appears certain that the words "correct" and "substitute" were intended to be synonymous, but the plain reading of the regulation as drafted dictates otherwise. This anomaly has been resolved with the January, 1992 amendment to the regulation which clarifies the situation.